IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8314 OF 2006
WITH
CIVIL APPLICATION NO. 11 OF 2007

Kinematic Engineering ...Petitioner

Versus

The State of Maharashtra and others ... Respondents

Mr. Chetan K. Pendse with Mr. Dushyant Purekar for the petitioner.

Mr. C.R. Sonawane, Assistant Government Pleader, for respondent Nos. 1 to 3.

Mr. A.S. Khandeparkar with Mr. D. Brijesh, instructed by Mr. N.P. Bhavsar for respondent No.4 in Writ Petition and Civil Application.

CORAM: **H.L. GOKHALE, Ag. C.J.,** & **V.M. KANADE, J.**

DATE: **FEBRUARY 13, 2007**.

P.C.

Heard Mr. Pendse in support of this petition. Mr. C.R. Sonawane, Assistant Government Pleader, appears for respondent Nos. 1 to 3. Mr. Khandeparkar assisted by Mr. Bhavsar appears for respondent No.4.

2. The petition seeks to challenge the decision of respondent

Nos. 1 to 3 to issue the work order to respondent No.4 concerning the anti-rust treatment to some parts of the Koyna Power Tunel. The advertisement was given on 29th August, 2006, in daily “Dainik Sagar (Ratnagiri Edition). The case of the petitioner is that initially all the applications were rejected by the Executive Engineer by his decision dated 8th November, 2006. However, for the reasons best known to them, the decision was revised and the Superintending Engineer took the decision to issue the work order to respondent No.4. It is this decision which is under challenge in this petition.

3. Mr. Pendse, learned counsel appearing for the petitioner, submitted that initially the Executive Engineer arrived at the correct decision. Since none of the applicants has furnished the necessary documents, as recorded in his communication dated 8th November, 2006, in his submission, there was no occasion to interfere with that decision and to award the contract to respondent No.4.

4. As against this, a reply has been filed by the Executive Engineer, Mechanical Division, Konkan Region, and in that it is pointed out that in fact respondent No.4 had tendered the necessary documents. A chart prepared by the Executive Engineer is annexed to

this affidavit at page 93. Column No. (viii) of this chart is with respect to the details of work of similar type carried out by the contractor in the past. That information is submitted only by respondent No.4 and by none of the other applicants. The only deficiency, if at all of respondent No.4, was about the machinery which they were expected to have and about which they were to make a statement. They had stated that the machinery will be hired whenever the same is required. The decision is corrected by the Superintending Engineer at his level and in his communication addressed to the Executive Engineer dated 23rd November, 2006, he has stated that it is only respondent No.4 who had given the particulars about the past experience and had fulfilled the necessary conditions. The Superintending Engineer noted that there was urgency to complete the work concerned and, therefore, he has issued the work order.

5. Reliance is placed by the respondents on Rule 208 of the relevant Manual wherein it is laid down that usually the lowest tender is to be accepted. In the present case, the tender of respondent No.4 is on the higher side. However, the Rule provides that the acceptance or rejection of the tender is left entirely to the discretion of the Officer to whom the duty is entrusted and no explanation can be demanded of the

cause of the rejection of his offer by any person submitting a tender.

6. In the instant case, the anti-rust treatment was to be provided. The Officer concerned viz. Superintending Engineer has, in terms, stated that there was urgency in executing the work. If that is so, in our view, the decision of the Officer cannot be faulted. It is a matter of discretion of the Officer. The contract was for about sixty days and the amount involved is just about Rs. 13 lakhs. Part of the work is already executed. This being the position, the contract being comparatively a small contract and there being urgency, in our view, the decision of the Superintending Engineer cannot be faulted in arriving at the decision. The petition is dismissed. Interim order dated 19th December, 2006 stands vacated.

7. In view of the above, no order is required to be passed in the Civil Application. Civil Application is accordingly disposed of.

ACTING CHIEF JUSTICE

V.M. KANADE, J.